IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2502 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARCHANA CO-OPERATIVE HOUSING SOCIETY LTD. & 51 - Petitioner(s)
Versus
RAMJIBHAI LALABHAI PARMAR & 6 - Respondent(s)

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Appearance :

MR TUSHAR MEHTA for Petitioner(s) : 1 - 4.
MR SHIRISH JOSHI for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/06/2006

ORAL JUDGMENT

1. In this petition, the petitioners have challenged order passed by the Board of Nominees on 16-8-1996 as upheld by the Cooperative

Tribunal by its judgement dated 16-3-1998.

2. Short facts leading to the present petition are that petitioner no.1 is Housing Cooperative Society, petitioners no. 2 to 4 are the members of the Society, respondents no. 1 to 3 herein are also the members of the same society. The issue pertains to allotment of plots in favour of petitioners no. 2 to 4 on one hand and respondents no. 1 to 3 on the other hand. It is the case of respondents no. 1 to 3 that in a meeting of the Society held on 19-10-1980, the process of allotment of respective plots to the members of the society was undertaken and completed. Accordingly, certain plots were alloted to the respondents herein. Similarly the petitioners no. 2 to 4 were also alloted plots pursuant to the resolution passed in the meeting held on 19-10-1980.

2.1 The respondents herein preferred a Lavad Suit before the Board of Nominees contending inter-alia that the allotment made pursuant to

the meeting dated 19-10-1980 should not be modified and that there is attempt on part of some of the members of the society to upset such allotment of plots. Initially, an ex-parte injunction came to be granted in favour of the respondents herein by the Board of Nominees on 17-3-1982. The interim injunction was in terms of paragraph 10 of the Lavad Suit which amounted to injunction against making any modification in the allotment made pursuant to meeting dated 19-10-1980. Subsequently, however, the Board of Nominees while taking up the question of confirmation/modification of the interim relief and also application seeking action for breach of injunction, vacated the interim relief and also rejected the Contempt Application filed by the respondents herein. This was done by an order dated 26-12-1984.

3. Eventually, the Board of Nominees passed the impugned order on 16-8-1996. Lavad Suit of the respondents herein was allowed. The allotment made pursuant to the meeting of the society

dated 19-10-1980 was held to be legal and operative. The allotments made pursuant to meeting dated 4-10-1981 was held illegal. Consequently, the plots alloted in favour of the petitioners no. 2 to 4 herein by subsequent meeting dated 4-10-1981, was required to be handed over to the respondents herein. The petitioners no. 2 to 4 i.e. individual allottee as well as the society preferred an appeal before the Cooperative Tribunal. Same appeal however, came to be rejected by impugned order dated 16-3-1998.

4. Firstly as noted earlier though the Board of Nominees had granted an ex-parte stay in the year 1982, same was virtually infructuous since by a subsequent resolution dated 4-10-1981, fresh allotment of plots was already made. In fact even when the Board of Nominees was granting ex-parte injunction, the respondents herein had already stated in the Lavad Suit that earlier allotment made on 19-10-1980 is modified. Quite apart from the validity of the

interim injunction, subsequently in the year 1984, same was vacated. Thus right from 1984 till 1996 when the Board of Nominees finally disposed of Lavad Suit, there was no injunction against the use and enjoyment of the plots alloted to the members of the society and the petitioners no. 2 to 4 herein in particular pursuant to resolution dated 4-10-1981. It is stated by learned advocate for the petitioners and it has also come on record before the Cooperative Tribunal that in the interregnum much development has taken place in the plot and building have been constructed. This by itself should have been sufficient for the Board of Nominees not to upset the equilibrium at such a distant point of time. Additionally, I also find that shortly after conducting of the meeting on 19-10-1980, the members of the society held another meeting on 4-10-1981 and it was decided to undertake the exercise of allotment afresh through drawing of lots. In this meeting all the respondents were present. In furtherance of this resolution, subsequent meetings were held on 8-

2-1981 - in which respondents were present, on 1-3-1981 – in which respondents no. 2 and 3 were present, on 2-4-1981 – again in which all the respondents were present. All these meetings and resolution adopted at such meeting demonstrated that all the members of the Cooperative Society shown reservation about the allotment of plots on 19-10-1980 and it was decided to abandon such allotment and to undertake the task all over again. In fact in the meeting dated 1-3-1981, respondent no.2 herein himself was the Chairman. As a culmination of series of these decisions, final meeting was held on 4-10-1981 and fresh allotments were made in which plots originally alloted to the respondents herein came to be alloted to the petitioners no. 2 to 4.

5. When the participation of respondents in all these meetings is not disputed, it is difficult to understand how they could have challenged the process of fresh allotment particularly when at all stages the intention of the society and its

members was manifested not to implement the allotment made on 19-10-1980 and to go for fresh process of allotment through drawing of plots. In view of the above discussion and also on account of the fact that more than two decades have passed since the petitioners no. 2 to 4 herein are enjoying the plots alloted to them, I see no possibility of disturbing such allotments. It is not the case of the respondents that they did not receive equal size of plots. Their only grievance probably is about the situation of plots alloted to them.

6. Considering all these aspects of the matter, I find that the orders passed by the authority below calls for intervention. In the result the impugned order dated 16-8-1996 passed by the Board of Nominees and order dated 16-3-1998 passed by the Cooperative Tribunal are quashed. The petition is disposed of. Rule made absolute accordingly with no order as to costs.

(Akil Kureshi,J.)

(raghu)